

June 17, 2004

Bertha Carswell  
2140 N.W. 114<sup>th</sup> Street  
Miami, FL 33167

**RE: REQUEST FOR ADVISORY OPINION 04-110  
(Amended)**

Dear Ms. Carswell:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 10, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding your ability to transact business with a developer appearing before Community Council #8.

In your letter, you advised the Commission that you have been a member of Community Council #8 since its inception. In March 2004, the Community council considered a request from Cornerstone Group to amend the Community Development Master Plan. The proposed amendment would affect an area adjacent to rental property owned by your family. You did not attend the meeting but the developer approached your family members about purchasing the property adjacent to the development. Subsequently, Cornerstone Group sent a letter of intent to you regarding the property.

The Commission found the Conflict of Interest and Code of Ethics ordinance does not explicitly prohibit you from selling property

to a developer who has business pending before the Community Council. However, pursuant to Section 2-11.1(e), the transfer of the property must be for lawful and adequate consideration and the transfer may not be in exchange for any official action taken or which could be taken. Further, Section 2-11.1(g) prohibits you from using your official position to secure any special privileges or benefits for yourself or others.

Additionally, Section 20-45 prohibits you from taking any action regarding the comprehensive development amendment or any other matter involving the development. Section 20-45 provides that "a community council member is prohibited from voting or participating in any way in any matter presented to the Community Council on which the member serves if the member has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Community Council on which the member serves: i) officer, director, partner, of counsel, consultant employee, fiduciary or beneficiary; or ii) stockholder, bondholder, debtor or creditor if in any instance the transaction or matter would affect the Community Council member in a manner distinct from the manner in which it would affect the public generally. Any Community Council member who has any of the above relationships and who would be or might be enhanced by the action of the Community Council on which the member serves shall absent himself or herself from the Community Council meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. Since any vote on the CDMP amendment or any matters involving the development will affect you in a manner distinct from the general public, you are prohibited from voting or participating in any way on any matter involving the development.

Therefore, the Conflict of Interest and Code of Ethics ordinance does not prohibit you from transacting business with a developer who has a matter pending before the Community Council. However, you must ensure that the transaction meets the requirements of Section 2-11.1(gifts) and Section 2-11.1(g)(misuse of official position). Further, Section 20-44 prohibits you from voting or participating in any way on the CDMP amendment or any matter involving the development.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS  
Executive Director